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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**IN RE TRANSPACIFIC PASSENGER AIR TRANSPORTATION ANTITRUST LITIGATION** )  
\_\_\_\_\_  
**This Document Relates to:** )  
**ALL ACTIONS** )  
\_\_\_\_\_  
Lead Case No.: 08-cv-01913-CRB  
MDL No. 1913  
Case No.: 07-cv-5634-CRB  
PLAINTIFFS' WORTMAN, ADAMS,  
AND GARCIA'S REPLY BRIEF  
REGARDING:  
MOTIONS FOR APPOINTMENT OF  
INTERIM LEAD COUNSEL  
Date: March 28, 2008  
Time: 10:00 a.m.  
Judge: Hon. Charles R. Breyer

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# **MEMORANDUM OF POINTS & AUTHORITIES**

I.

## **INTRODUCTION**

The law firm of Cotchett, Pitre & McCarthy (“CPM”) respectfully submits that, due to the complexity of this action, the best way to manage this case is with a Steering Committee. A committee, however, should not be run by a committee - but by a single law firm who gives immediate direction and leadership.

III.

## **DISCUSSION**

## A. CPM is Supported by the Great Majority of Law Firms in this Litigation

CPM believes that the best management structure for this case is with CPM serving as lead counsel with the support of an authorized Steering Committee. CPM has the support of the great majority of the law firms in this litigation to serve as lead counsel in this litigation. 11 out of 14 firms filed papers supporting the leadership structure proposed by CPM and supporting CPM's appointment as lead counsel, and two have indicated they will speak at the hearing in favor. Those firms are:

- Baker, Keener & Nahra, LLP;
  - Engstrom, Lipscomb & Lack;
  - Girard Gibbs LLP;
  - Girardi & Keese LLP;
  - Kabateck Brown Kellner LLP;
  - Milberg Weiss LLP;
  - Murray & Howard, LLP;
  - O'Donnell & Associates PC;
  - Pearson, Simon, Soter, Warshaw & Penny, LLP;
  - Saveri & Saveri, Inc.; and
  - Trump, Alioto, Trump & Prescott, LLP.



1           **B. Single Leadership Supported by a Steering Committee is the Optimal Structure**

2           Cohen, Milstein, Hausfeld & Toll, P.L.L.C. (“CMHT”) does not challenge CPM’s  
 3 qualifications to serve as lead counsel but believes that a dual leadership structure is more  
 4 efficient than a single leadership structure. A single Lead Interim Class Counsel with the  
 5 support of an authorized Steering Committee, as proposed by CPM, provides the optimal  
 6 structure for the litigation of this action. CPM agrees with the law firm of CMHT that this is a  
 7 large case involving nearly a dozen airlines conducting business in countries and cities all across  
 8 the world. CPM, however, disagrees with CMHT’s assertion that appointing multiple law firms  
 9 as co-lead counsel would improve efficiency in this action. Rather, CPM believes that a single  
 10 Lead Interim Class Counsel providing consistent and focused leadership, assisted by a Steering  
 11 Committee of firms focused on distinct airlines, routes and countries, would be the optimal  
 12 structure for the successful prosecution of this action.

13           Federal Rule of Civil Procedure 23(g)(2)(B) states that, “[i]f more than one adequate  
 14 applicant seeks appointment as class counsel, ***the court must appoint the applicant best able to***  
 15 ***represent the interests of the class.***” (emphasis added). “If there are multiple applicants, the  
 16 court’s task is to select the applicant best able to represent the interests of the class.” *Manual on*  
 17 *Complex Litigation*, Fourth ¶ 21.271 at 279 (2004). Due to the large number of airlines,  
 18 countries and routes involved, the best structure would include a Steering Committee, with each  
 19 member of the committee becoming an expert on their designated airlines, routes and countries.  
 20 CPM strongly believes that their proposed structure serves the best interests of the putative  
 21 class. CPM has experience litigating complex class actions and has successfully prosecuted  
 22 complicated national class action antitrust actions.

23           In an action of this size, the most efficient structure would be to have a single firm  
 24 serving as lead counsel with the Court’s authority to organize a Steering Committee composed  
 25 of several law firms to assist with the work involved. Lead counsel, along with the Steering  
 26 Committee, would then divide the airlines and countries in a sensible manner and use one or  
 27 two law firms to assist in conducting discovery and litigation for a given country and/or airline.  
 28 This approach is far more effective and will give direct leadership that can report to the Court.

1 One lead counsel would be able to coordinate the overall strategy of this litigation and provide  
 2 consistent direction while the different law firms on the Steering Committee would be able to  
 3 assist with discovery and develop a strong knowledge base regarding a given airline and/or  
 4 country.

5 **C. CPM Does Not Oppose Including CMHT as a Steering Committee Member and in  
 6 Fact Welcomes Them**

7 As this Court is well aware, CPM has worked in the past with CMHT and is  
 8 knowledgeable about the skill and experience of CMHT as class action attorneys. CPM  
 9 believes that their addition to the Steering Committee would be beneficial to the putative class.

10 For the foregoing reasons, CPM believes that the interests of the class are best served by  
 11 having a single Lead Counsel, supported by a Steering Committee authorized by this Court.  
 12 Having one law firm serving as lead counsel would provide consistent direction regarding the  
 13 overall strategy and prosecution of this action.

14 **III.**

15 **CONCLUSION**

16 CPM is ready, willing and able to serve as lead counsel and organize a Steering  
 17 Committee to be submitted to the Court for approval. For the foregoing reasons, the law firm of  
 18 Cotchett, Pitre & McCarthy respectfully requests appointment as interim class lead counsel for  
 19 the putative plaintiff class pursuant to Federal Rule of Civil Procedure 23(g).

20  
 21 DATED: March 14, 2008

**COTCHETT, PITRE & McCARTHY**

22  
 23 By: /s/ Joseph W. Cotchett  
 24 JOSEPH W. COTCHETT

25 *Attorneys for Plaintiffs and the Proposed Class*